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November 6, 2008

The Honorable Charles Terreni  
Chief Clerk of the Commission  
Public Service Commission of South Carolina  
Post Office Drawer 11649  
Columbia, South Carolina 29211

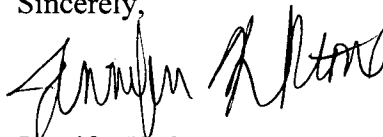
Re: Joseph L. Godfrey v. BellSouth Telecommunications, Incorporated d/b/a AT&T  
South Carolina  
Docket No.: 2008-368-C

Dear Mr. Terreni:

Enclosed for filing is AT&T South Carolina's Answer and Motion to Dismiss in the above-referenced matter.

By copy of this letter, I am serving all parties of record with a copy of this response as indicated on the attached Certificate of Service.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jennifer K. Stone', written over a horizontal line.

Jennifer K. Stone

JKS/nml  
Enclosure  
cc: All Parties of Record  
DM5 #721172

BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA

DOCKET NO. 2008-368-C

IN RE:	)	
	)	
Joseph L. Godfrey,	)	
Complainant/Petitioner,	)	
	)	
v.	)	
	)	
BellSouth Telecommunications, Inc.	)	
d/b/a AT&T South Carolina,	)	
	)	
<u>Defendant/Respondent.</u>	)	

**AT&T SOUTH CAROLINA’S ANSWER AND MOTION TO DISMISS**

In compliance with the Notice the Public Service Commission of South Carolina (“the Commission”) issued in this Docket, Defendant/Respondent BellSouth Telecommunications, Inc. d/b/a AT&T South Carolina (“AT&T South Carolina”) respectfully submits this Answer and Motion to Dismiss to Complainant/Petitioner Joseph L. Godfrey’s (“Mr. Godfrey’s”) submission received by the Commission on September 25, 2008 (hereinafter “Complaint”).

**SUMMARY OF MR. GODFREY’S ALLEGATIONS AND  
REQUESTS FOR RELIEF**

In his Complaint, Mr. Godfrey alleges that he sent AT&T South Carolina a check in the amount of \$109.93 in payment of a bill, that AT&T inaccurately scanned the check in the amount of \$840.27, and that as a result, \$730.34 too much (\$840.27 - \$109.93) was withdrawn from his checking account. *See* Complaint at p. 1. Mr. Godfrey alleges that AT&T South Carolina “refuses to refund my money,” Complaint at p. 1, and he asks the Commission to: (1) order AT&T South Carolina to refund “the total amount of \$730.34;” (2) fine AT&T South Carolina “for refusing to correct the problem;” and (3) order AT&T

South Carolina to pay Mr. Godfrey compensation “for the time and effort spent trying to collect the money . . . .” Complaint at p. 2.

### **AT&T’S RESPONSE TO FACTUAL ALLEGATIONS**

In response to these allegations, AT&T South Carolina admits that it mistakenly scanned Mr. Godfrey’s check in the wrong amount and that, as a result, \$730.34 too much was withdrawn from his checking account. AT&T South Carolina also asserts and admits that it has sent Mr. Godfrey a check in the amount of \$730.34 and that it has placed additional good-will adjustments on Mr. Godfrey’s telephone bill. AT&T South Carolina denies all allegations in the Complaint that are inconsistent with these admissions, including without limitation the allegations that it “refused to refund” \$730.34, that it “stole” money from Mr. Godfrey, and that it “refused to correct the problem.”

### **AT&T’S RESPONSE TO REQUESTS FOR RELIEF**

With regard to the relief requested by Mr. Godfrey, AT&T South Carolina asserts the following:

(1) Mr. Godfrey’s request that the Commission order AT&T South Carolina to refund “the total amount of \$730.34” is moot because, as explained above, AT&T South Carolina has sent Mr. Godfrey a check in that amount.

(2) The Commission should dismiss, or in the alternative, deny Mr. Godfrey’s request that the Commission fine AT&T South Carolina “for refusing to correct the problem.” South Carolina statutes govern when and how fines can be imposed against telephone utilities like AT&T South Carolina, *see* S.C. Code Ann. §58-9-1610 to 1650, and those statutes require that “[a]ctions to recover penalties under Articles 1 through 13 of this chapter shall be brought in the name of the Office of Regulatory Staff or the State

in any court of competent jurisdiction.” *Id.*, §58-9-1650 (emphasis added). The Commission, therefore, should dismiss this request for relief because it lacks jurisdiction to consider it. In the alternative, and without waiving the foregoing, the Commission should deny this request for relief because: (a) as explained above, AT&T South Carolina has, in fact, corrected the problem; and (b) Mr. Godfrey has not alleged and cannot show that AT&T South Carolina has violated any provision of Articles 1 through 13 of Chapter 9 of Title 58 of the South Carolina Code or that AT&T South Carolina has disobeyed a lawful order of the Commission. *See* S.C. Code Ann. §58-9-1610.

(3) The Commission should dismiss, or in the alternative, deny Mr. Godfrey’s request that the Commission order AT&T South Carolina to pay Mr. Godfrey compensation “for the time and effort spent trying to collect the money . . . .” To the extent Mr. Godfrey requests money damages, the Commission should dismiss this request for relief because it lacks jurisdiction to consider it.<sup>1</sup> In the alternative, and

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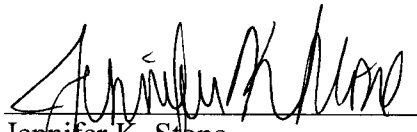
<sup>1</sup> *See* Order Denying [Various Motions] and Partially Dismissing Complaint, *In Re: Sandi Perry v. BellSouth Telecommunications, Inc.*, Order No. 2007-277 in Docket No. 2006-294-C at 2-3 (April 23, 2007). *Cf. Public Service Commission of Oklahoma v. Norris Sucker Rods*, 917 P.2d 992, 996 (Okla. Ct. App. 1996)(“the Commission is not a court of general jurisdiction and cannot enter a money judgment against a party.”); *Carr. V. Cincinnati Bell, Inc.*, 651 S.W.2d 126, 128 (Ky. Ct. App. 1983)(the Kentucky Commission lacks legal authority to award monetary damages); *Southern Bell v. Mobile America Corp.*, 291 So. 2d 199 (Fla. 1974)(“Nowhere . . . is the PSC granted authority to enter an award of money damages (if indicated) for past failures to provide telephone service meeting the statutory standards; this is a judicial function within the jurisdiction of the circuit court . . . .”); *Muskegon Agency v. General Tel. Co.*, 65 N.W.2d 748, 752 (Mich. 1954)(“The [Michigan] Commission has no jurisdiction to award plaintiff damages or to reimburse plaintiff for its losses. Only a court, in accordance with due process, can constitutionally award damages in a civil action.”); *In re: Amended Complaint and petition of John Charles Heekin against Florida Power & Light Company*, Docket No. 981923-EI, Order No. PSC-99-1054-FOF-EI (May 24, 1999) (Florida Commission dismissed a complaint seeking monetary damages against a public utility for alleged eavesdropping, voyeurism, and damage to property because the complaint involved “a claim for monetary damages, an assertion of tortious liability or of criminal activity, any and all of which are outside this Commission’s jurisdiction.”).Order, *In Re: Bart MacFarland, DMD v. Kentucky Utilities Company*,

without waiving the foregoing, to the extent that Mr. Godfrey requests compensation that the Commission may have jurisdiction to provide, Commission Regulation 103-623 governs refunds and adjustments that are due when a telephone utility overcharges a customer for regulated services. The total value of the \$730.34 check AT&T South Carolina has sent Mr. Godfrey and the good-faith billing adjustments it has provided far exceed the value required by this Regulation. The Commission, therefore, should deny Mr. Godfrey's request for any compensation that the Commission may have jurisdiction to award.

For the reasons stated above, AT&T South Carolina requests that the Commission enter an Order dismissing Mr. Godfrey's Complaint with prejudice and/or denying all relief requested in the Complaint.

Respectfully submitted this 6<sup>th</sup> day of November, 2008.

By:

  
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ATTORNEY FOR AT&T SOUTH CAROLINA

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Case No. 97-012 at 2 (January 21, 1997)(The Kentucky Commission "does not possess the authority to award compensatory or punitive damages.").

STATE OF SOUTH CAROLINA                    )  
  )  
COUNTY OF RICHLAND                        )

CERTIFICATE OF SERVICE

The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for BellSouth Telecommunications, Inc. d/b/a AT&T South Carolina ("AT&T") and that she has caused AT&T South Carolina's Answer and Motion to Dismiss in Docket No. 2008-368-C to be served upon the following on November 6, 2008.

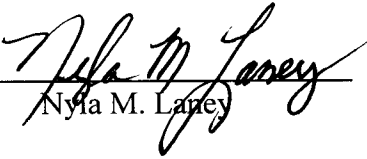
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